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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,931	06/30/2000	Jay S. Walker	99-099	2766

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STAMFORD, CT 06905

EXAMINER

MCALLISTER, STEVEN B

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 10/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/609,931

Applicant(s)  
Walker et al

Examiner  
Steven McAllister

Art Unit  
3627



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30, 33, and 35 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30, 33, and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Jun 30, 2000 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 6) ☐ Other:

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election without traverse of claims 1-30, 33 and 35 in Paper No. 5 is acknowledged.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-20, 24-30 and 35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed inventions are business methods lacking any nexus with technology. While a computer-aided business method is statutory subject matter, the computer, or some technological nexus, must be recited in the claim.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-11, 13-15, and 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dejaeger et al (6,456,981) in view of Kesel (5,822,744).

Dejaeger shows receiving customer information including transaction information; identifying a query based at least in part on customer data; outputting an indication of the query; and receiving a response to the query. It does not specifically show receiving the response verbally. Kesel shows receiving a verbal response. It would have been obvious to one of ordinary skill in the art to modify the method of Dejaeger by receiving responses verbally in order to facilitate easy responding without a need for knowledge of operating computer peripherals.

As to claims 2 and 4, Kesel shows analyzing the responses.

As to claim 3, Dejaeger in view of Kesel shows identifying and outputting a second query and receiving a second verbal response.

As to claim 6, Dejaeger shows that transaction data includes information indicating that a purchase is complete.

As to claim 7, Dejaeger shows that transaction data includes information identifying the start of a transaction.

Additionally, regarding claims 6 and 7, it is notoriously old and well known in the art to associate, for instance, a start and completion time with transaction data. It would have been obvious to one of ordinary skill in the art to further modify the method of Dejaeger by doing so in order to provide the ability to correlate purchasing patterns with date or time of day, and to track the amount of time taken to check out.

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As to claim 8, Dejaeger shows that the transaction data includes information from a current transaction.

As to claim 9, Dejaeger shows identifying a query based at least in part on transaction information from a previous transaction.

As to claim 10, Dejaeger shows identifying a query based at least in part on information unrelated to a transaction (e.g., an information request).

As to claim 11, Dejaeger shows identifying a query based at least in part on customer information identifying a particular customer (e.g., as found when the customer swipes his loyalty card).

As to claim 13, Dejaeger in view of Kesel shows practicing the method using an attendant at a POS terminal. It is inherent that identifying a query is based at least in part on a skill level of an attendant since in the assisted checkout scenario the attendant enters information into the system (e.g., scanning items, etc.). Since the each item scanned is added to the customer profile in substantially real time and the next survey question or offer is based upon the customer profile now modified by the attendant's action, the attendant's skill level plays a part in the determination of the query. (For example, if the attendant misscans an item, it materially affects the content of the user profile and has an effect on what question may be selected).

As to claim 14, Dejaeger shows that the transaction data includes at least identity of the customer.

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As to claim 15 Kesel shows generating output data based on the verbal response and categorizing the output data.

As to claim 21, Dejaeger in view of Kesel shows all elements of the claim except receiving customer information using a portable computing device. However, doing so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the method of Dejaeger by doing so in order to the customer to retrieve information about items throughout the store.

Additionally, the subject matter of claim 21 is obvious over that of claim 22. If it were determined that claim 21 was patentably distinct from claim 22, a species requirement would be necessary.

As to claim 22, Dejaeger shows receiving customer information using a POS terminal.

As to claim 23, Kesel shows selectively recording the verbal response.

As to claim 24, Dejaeger in view of Kesel show determining an offer based at least in part on the verbal response since the results of the verbal response are integrated into the customer profile and the resulting offer is determined from the customer profile; and presenting the offer.

As to claim 27, Dejaeger in view of Kesel show all elements of the claim except identifying a remediation response based on a verbal response to a question and instructing and attendant to present the remediation response. However, to perform these steps is notoriously old and well known in the art. It would have obvious to one of ordinary skill in the art to further modify the method Dejaeger by doing so in order to increase customer satisfaction.

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As to claim 25, Dejaeger in view of Kesel show determining a plurality of offers based at least part on the verbal response. Dejaeger further shows performing the method in an assisted checkout using an attendant. It does not explicitly show prompting the attendant to select an offer and present it. However, it is notoriously old and well known in the art for the attendant to be prompted to select and communicate offers in the checkout environment. It would have been obvious to one of ordinary skill in the art to do so in order to provide flexibility and to provide a personal interaction with the customer.

6. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dejaeger et al in view of Kesel and Walker et al (6,567,787).

Dejaeger shows receiving first information; identifying at least a first query based at least in part on the first data; presenting the query; and receiving a response to the query. It does not specifically show prompting an attendant to present the query or categorizing the customer response. Kesel shows categorizing the customer response. It would have been obvious to one of ordinary skill in the art to modify the method of Dejaeger by categorizing the response in order to facilitate efficient data manipulation and data mining of the information contained in the response. Walker et al show prompting an attendant to present the query. It would have been obvious to one of ordinary skill in the art to further modify the method of Dejaeger by prompting the attendant to transmit the query in order to provide for a more personal transaction without the need to interact with a machine.

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7. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dejaeger et al in Walker et al (6,567,787).

Dejaeger shows receiving customer information; identifying at least a survey question based at least in part on the customer data; outputting an indication of the query; and receiving a response to the query. It does not specifically show prompting an attendant to present the query. Walker et al show prompting an attendant to present the query. It would have been obvious to one of ordinary skill in the art to modify the method of Dejaeger by prompting the attendant to transmit the query in order to provide for a more personal transaction without the need to interact with a machine.

8. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dejaeger et al in view of Kesel and Walker et al (6,567,787).

Dejaeger shows receiving first information comprising at least first information about a first product; identifying a query based at least in part on the first data identifying a product; presenting the query; and receiving a response to the query. It does not specifically show prompting an attendant to present the query, receiving a verbal response, analyzing the response, and instructing the attendant to perform remediation. Kesel shows receiving a verbal customer response and analyzing the response. It would have been obvious to one of ordinary skill in the art to modify the method of Dejaeger by receiving a verbal response and analyzing the response in order to allow the customer to respond without having the knowledge of the operation of computer peripherals and to recognize trends in the data. Walker et al show prompting an



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attendant to present the query. It would have been obvious to one of ordinary skill in the art to further modify the method of Dejaeger by prompting the attendant to transmit the query in order to provide for a more personal transaction without the need to interact with a machine. It is notoriously old and well known in the art to instruct an attendant to perform remediation. It would have been obvious to do so in order to promote customer satisfaction.

9. Claims 12, 16-20, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dejaeger et al in view of Kesel as applied to claims 1, 2, 11, 15 and 27 above, and further in view of Walker et al (6,567,787).

As to claim 12, Dejaeger in view of Kesel shows all elements of the claim except that attendant identifies information identifying a particular customer. Walker et al show this (e.g., the attendant has inherently identified information identifying a particular customer since he says his name aloud). It would have been obvious to one of ordinary skill in the art to further modify the method of Dejaeger by having the attendant identify information identifying a particular customer in order to greet the customer by name.

As to claims 16-18, Dejaeger in view of Kesel show all elements of the claim except prompting an attendant to present the query. Walker et al show prompting an attendant to present the query. It would have been obvious to one of ordinary skill in the art to transmit the query via an attendant in order to provide for a more personal transaction without the need to interact with a machine.

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As to claim 19, Dejaeger in view of Kesel show identifying an attendant since the method since Dejaeger discloses practicing the method at an attended POS terminal. Dejaeger in view of Kesel do not show prompting an attendant to present the query. Walker et al show prompting an attendant to present the query. It would have been obvious to one of ordinary skill in the art to transmit the query via an attendant in order to provide for a more personal transaction without the need to interact with a machine.

As to claim 20, Walker et al show analyzing if the attendant properly presented the query.

As to claim 28, Walker et al inherently show compensating the attendant for properly presenting the query since all employees are compensated.

Additionally, it is notoriously old and well known in the art to incentivize an employee for properly performing a task. It would have been obvious to one of ordinary skill in the art to do so in order to promote better performance at job tasks.

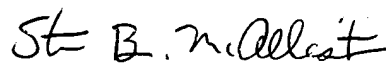
As to claim 29, Dejaeger in view of Kesel show compensating the attendant for properly presenting the response since an employee is compensated for the proper conduct of his job. They do not show analyzing if the attendant properly present the response. Walker et al show this element. It would have been obvious to one of ordinary skill in the art to further modify the method of Dejaeger by analyzing for proper response as taught by Walker et al in order to ensure that messages are properly conveyed.

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*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052.

  
Steven B. McAllister

September 30, 2003